

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D C 20554

OFFICE OF  
MANAGING DIRECTOR

JAN 06 2003

Mr. Thomas J. Hutton  
Holland & Knight LLP.  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, DC 20006-6801

Re: Petition for Waiver of FY 2002  
Regulatory Fee  
Fee Control No. 00000RROG-02-104

Dear Mr. Hutton:

This letter responds to your request dated September 25, 2002 for a waiver of the Fiscal Year (FY) 2002 regulatory fee of \$12,800 submitted on behalf of WTVE (TV), Reading, Pennsylvania, licensed to Reading Broadcasting, Inc.

You recite that payment of the fee would create financial hardship. In support you attach copies of the licensee's financial statements for 2000 and 2001, including balance sheets, statements of income, stockholders' equity, and cash flows for those years, which you state shows significant losses.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333,5346 (1994), recon. granted, 10 FCC Rcd 12759(1995).

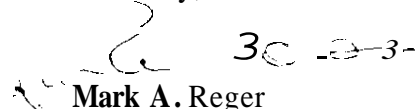
In determining whether a licensee has sufficient revenues to **pay** its regulatory fees, the Commission relies upon a licensee's cash flow. as opposed to the entity's profits. Thus, although deductions for amortization and depreciation. which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

Our review of your submission indicates that Reading Broadcasting, Inc. suffered a loss of \$560,715 in 2001 and that this loss was only partially offset by depreciation expense of \$23,019 and payments to officers of \$131,870. Accordingly, in light of your compelling showing of financial hardship, your request for waiver of the FY 2002 regulatory fee is granted.

Your have also requested confidential treatment of the materials that you submitted with your fee waiver request. Pursuant to Section 0.459(d)(1) of the Commission's rules, 47 C.F.R. 0.459(d)(1), **we** do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

  
**Mark A. Reger**  
Chief Financial Officer

# HOLLAND & KNIGHT LLP

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September 25, 2002

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THOMAS J. HUTTON  
202 828-192  
thutton@hklaw.com

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Reading Broadcasting, Inc.  
Request for Waiver of Regulatory Fees

Dear Ms. Dortch:

Submitted herewith in triplicate on behalf of Reading Broadcasting, Inc. is a petition for waiver of the company's annual regulatory fees pursuant to Section 1.1166 of the Commission's Rules. Because the waiver petition is based on financial hardship and includes documentation as required by Section 1.1166(c) of the Commission's Rules, we believe the waiver request also serves as a petition to defer payment pending a ruling on the waiver request. Alternatively, I request that this letter, combined with the attached materials, be treated as such a petition. Accordingly, no fee payment and no Form 159 is included with the filing.

Please direct any correspondence or questions concerning this matter to me.

Sincerely,

Thomas J. Hutton

Enclosures



READING BROADCASTING, INC.  
WTVE (TV)

1729 NORTH 11TH STREET  
READING, PENNSYLVANIA 19604

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E-MAIL: [bankmcc@wtve.com](mailto:bankmcc@wtve.com)

September 24, 2002

Andrew S. Fishel, Esq.  
Managing Director  
Federal Communications Commission  
Washington, D.C. 20554

Re: *Commercial Television Station WTVE  
Reading, Pennsylvania  
Request ~~for~~ Waiver ~~of~~ Regulatory  
Fees*

Dear Mr. Fishel:

Reading Broadcasting, Inc. ("RBI"), licensee of commercial television station WTVE, Reading, Pennsylvania, herewith requests that the Commission waive the requirement that RBI pay \$12,800 in fees for Fiscal Year 2001.

***RBI's Background:*** Reading is a small city located about 38 miles northwest from Philadelphia in fairly mountainous terrain. RBI commenced operation of commercial television station WTVE in about 1981. Prior to 1986, the Company attempted to enter the subscription television business, in which a programming service in encrypted form would be broadcast, and subscribers to that service who paid a regular fee to the Company would be provided with decoding equipment to view the signal. That venture was financially ruinous, resulting in the Company's being in substantial debt. In 1986, three creditors forced the Company into bankruptcy under Chapter 11 of the *United States Bankruptcy Code*. The Company was permitted to continue to operate the Station as a debtor in possession while various bankruptcy plans were filed and considered by the United States Bankruptcy Court for the Eastern District of Pennsylvania. In 1991, after the Company had retained the services of Partel, Inc., to manage the Company's **affairs**, the Company filed its Amended Sixth Modification to the *Fourth Amended Plan of Reorganization*, which was confirmed by the Bankruptcy Court. Pursuant to the *Bankruptcy Plan*, the Company emerged from bankruptcy with one class of stock issued to many



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persons who formerly had been creditors or claimants of the Company. The Company has been operating WTVE continuously since that time.

From 1986 through September 1996, WTVE was an affiliate of Home Shopping Network, and the station devoted a substantial portion of the broadcast day to HSN programming. Commencing in October 1996, the station became an affiliate of Infomall Television Network, a service of Paxson Communications Corporation. Although the Company anticipated a long-term relationship with that network, Paxson Communications Corporation elected to cease providing Infomall Television Network programming on May 31, 1998, so that it could commence its new television network service on September 1, 1998. WTVE was not selected by Paxson to be a Pax TV affiliate.

Thus, WTVE became an affiliate of Telemundo Network, Inc., and began providing the Philadelphia Television Market Hispanic programming as of June 1, 1998. The station has had to begin from “scratch” with a local sales presence and a substantial commitment to local Hispanic programming to complement Telemundo network programming, and thus has experienced serious shortfalls in revenue. After a year of operations with Telemundo, RBI terminated the Network Affiliation Agreement for, *inter alia*, the failure of Telemundo to attract any significant audience or revenues.

At the termination of Telemundo’s Network Agreement, RBI signed a ***Time Brokerage Agreement*** with Philadelphia Television Network, Inc., in November 1999. PTN was to delivery high-quality regional news for the Philadelphia market to RBI for transmission. After a year of operation and over \$4 million in losses, FTN abandoned its news format in November 2000. In December 2000, a ruinous fire substantially destroyed the WTVE transmitter. Although insurance covered some of the cost of replacement, RBI has spent nearly \$100,000 of its own funds in completing construction on a new transmitter, which only completed tests last Friday, September 21, 2001. From December 2000 through the present, WTVE has operated with about one-half licensed power.

In August 2001, RBI was compelled by PTN’s repeated failure to make timely payments of its obligations to RBI to terminate the PTN Time Brokerage Agreement. Since August 6, 2000, WTVE has been carrying a variety of religious, infomercial,



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shopping and locally-produced public affairs programming, while trying to increase its revenues. At the same time, RBI has been incurring legal fees in excess of \$200,000 annually to fend off PTN's unlawful attempts to obtain an injunction and for its commercial television license renewal before the Commission (which resulted in a Commission decision on July 11, 2002, granting renewal to the Company).

***RBI's Market Position:*** Presently, WTVE's licensed signal reaches about 420,000 television households in its Grade B contour, as determined according to FCC standards.' This area encompasses roughly 3,400 square miles which include all of Berks County and parts of the surrounding eleven-county region.

RBI has held a construction permit to build a new transmission facility on Fancy Hill, Pennsylvania, about 11 miles east of the station's present tower on Mount Penn in the City of Reading. That construction permit is referenced in the *Factbook* report on WTVE. RBI's studies demonstrate that upon completion of its Fancy Hill tower project, WTVE's signal will reach 1.2 million households within a radius of nearly 8,400 square miles. This improved coverage will also give WTVE the potential to reach nearly 2.0 million television households now connected to cable television systems.

On May 4, 1990, RBI was granted a Construction Permit by the FCC for a new tower and transmitter on a site known as Long Hill. Long Hill was located only about 3 miles from the present Fancy Hill site, but site development costs and the inability to reach terms with the landowner resulted in that permit expiring without construction being undertaken. Fancy Hill, the summit of which is located 1,100 feet above mean sea level did not have the same limitations. Thereafter, RBI obtained the current Fancy Hill permit from the FCC on May 3, 1995.

After substantial delay because of zoning problems, the Company proceeded with construction in October 1996. Unfortunately, zoning matters were not resolved, and Earl Township, Pennsylvania — the township in which Fancy hill is located --



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filed **an** action known as *Earl Township v. Reading Broadcasting, Inc.*, Case No. 96-11187, in the Berks County Court of Common Pleas, seeking a permanent injunction against RBI constructing the proposed Fancy Hill tower.

On September 15, 1997, the Berks County Court of Common Pleas held that RBI was obligated to obtain from the Earl Township Zoning Officer a determination of whether the proposed Fancy Hill tower construction is exempt from application **of** zoning regulation because of RBI's claim of status as a public utility corporation under Pennsylvania law. Additionally, the Court ruled that RBI's claim of variance by estoppel must be presented to the Zoning Officer for an administrative determination prior to adjudication before the Court. Thus, RBI was enjoined from proceeding with the Fancy Hill construction pending exhaustion of its administrative remedies.

RBI appealed the Court's ruling. By **an Order** and accompanying decision released June 17, 1998, the Commonwealth Court of Pennsylvania reversed the Common Pleas Court's ruling, and ordered the Common Pleas Court to conduct evidentiary hearings on whether RBI met the Commonwealth's definition of a "public utility" and was thus exempt from zoning, and **also** to hear RBI's equitable estoppel argument. However, Earl Township has filed a petition of allocuter with the Supreme Court of Pennsylvania, essentially a petition for writ of *certiorari*. RBI has opposed that petition, but it remains pending. If the Supreme Court were to grant the petition, the parties would then proceed on a briefing schedule to litigate the issue. If the Supreme Court denies the petition, the matter would be remanded to the Common Pleas Court for further hearing.

The matter went to **trial** again in the Court of Common Pleas. On March 29, 2001, the Berks County Court of Common Pleas again held that RBI was obligated to obtain from the Earl Township Zoning Officer **a** determination of whether the proposed Fancy Hill tower construction is exempt from application of zoning regulation because of RBI's claim of status as a public utility corporation under Pennsylvania law. Additionally, the Court again ruled that RBI's **claim** of variance by estoppel must be presented to the Zoning Officer for an administrative determination prior to adjudication before the Court. Thus, the injunction continues.



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On or about April 30, 2001, RBI filed an application for construction permit with the FCC to construct improved facilities at its present site on Mount Penn. After well over a year, that analog application is still pending, although RBI obtained a construction permit to build WTVE-DT on the Mount Penn site in June 2002.

**Financial Results:** In 2001, the Company had losses of \$560,000 on revenues of \$1.81 million. At the end of 2000, the Company had a negative net worth of \$1.988 million. By the end of last year, the accumulated losses totaled \$2.55 million. See Financial Results for December 31, 2001, attached hereto. The Company asks that these financial results be treated as confidential and exempt from public disclosure.

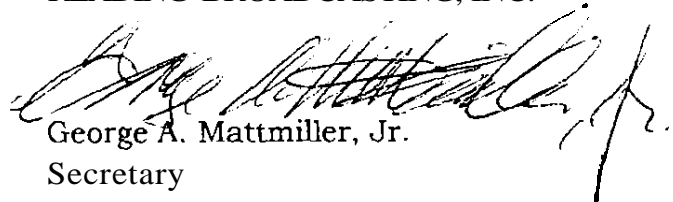
**Conclusion:** WTVE is clearly operating with facilities which provide inferior coverage on the northwest fringes of the Philadelphia market, and has suffered severe losses. The Commission's assessment of a \$12,800 regulatory fee on the station is a burden which the Company is unable to bear at present.

I note that the Commission previously has waived this fee until such a time as the station's facilities are on par with other facilities in this market. I ask that this waiver continue

This request was prepared under the direction of the undersigned, an officer of Reading Broadcasting, Inc., and is true to the best of my personal knowledge. I have signed this letter under penalty of perjury under the laws of the United States.

Respectfully submitted,

READING BROADCASTING, INC.

  
George A. Mattmiller, Jr.  
Secretary

Attachment: Financial Statement